Crl.Appeal No.983/98

The appellants 1,3,5 and 6 to 8/ accused Nos.1,3,5 and 6 to 8 were directed to be released on bail as per the order of this Court dated 19.11.1998 and made in Crl.M.P 9715/98.

The 2nd appellant/2nd Accused was directed to be released on bail as per the order of this Court dated 18.1.2002 and made in Crl.M.P.No.9204/2001

The 4th appellant/4th accused was directed to be released on bail as per the order of this Court dated 2.7.1999 and made in Crl.M.P.4174/99.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.06.2005

Coram :

THE HONOURABLE MR.JUSTICE N.DHINAKAR

and

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

Criminal Appeal No.983 of 1998

1.Secretary @ Mara Naicker
2.Duraisamy
3.Murugesan @ Murugaiyan
4.Shanmugham
5.Sundaran
6.Maharajan
7.Padma @ Padmini
8.Jaya Appellants(Accused 1 to 8)

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v.

State by
Sub Inspector of Police,
Sathyamangalam
Crime No.256/1997. Respondent (Complainant)

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Criminal Appeal filed under section 374 (2) of the Code of Criminal Procedure against the judgment dated 02.11.1998 in Sessions Case No.118 of 1998 on the file of the Second Additional Sessions Judge, Erode.

For Appellants : Mr.V.K.Muthusamy,
Senior Counsel, for
Mr.M.M.Sundaresh

For Respondent : Mr.S.Jayakumar,
Additional Public Prosecutor

JUDGMENT

(Judgment of the Court was delivered by M.CHOCKALINGAM, J.)

This appeal has been brought forth by the appellants who stand charged, tried and found guilty as shown below :

(i) Accused-1, 3 to 6 stood charged under Section 147 of the Indian Penal Code.
(ii) Accused-2, 7 and 8 stood charged under Section 148 of the Indian Penal Code.
(iii) Accused-2 stood charged under Section 302 of the Indian Penal Code.
(iv) Accused-4 stood charged under Section 302 read with 34 of the Indian Penal Code.
(v) Accused-1 stood charged under Section 324 of the Indian Penal Code.
(vi) Accused-3, 5 and 6 stood charged under Section 323 of the Indian Penal Code.
(vii) Accused-7 and 8 stood charged under Section 324 of the Indian Penal Code.

2. On trial, Accused-1 was found guilty under Sections 147 and 324 of the Indian Penal Code and was awarded a punishment of rigorous imprisonment for six months and one year respectively. Accused-2 was found guilty under Sections 148 and 302 of the Indian Penal Code and was awarded a punishment of rigorous imprisonment for one year and life imprisonment respectively. Accused-3 was found guilty under Sections 147 and 323 of the Indian Penal Code and was awarded rigorous imprisonment for six months for each offence. Accused-4 was found guilty under Sections 147 and 302 read with 34 of the Indian Penal Code and was awarded rigorous imprisonment for six months and life imprisonment respectively. Accused 5 and 6 were found guilty under Sections 147 and 323 of the Indian Penal Code and each was awarded rigorous imprisonment for six months for each offence. Accused-7 was found guilty under Sections 148 and 324 of the Indian Penal Code and was awarded rigorous imprisonment for one year for each offence. Accused-8 was found guilty

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under Sections 148 and 324 of the Indian Penal Code and was awarded rigorous imprisonment for one year for each offence. The aggrieved accused have brought forth this appeal before this Court.

3. The short facts necessary for the disposal of this appeal can be stated thus:

(a) All the witnesses examined on the side of the prosecution, except the officials, and the appellants 1 to 8 belong to Sathyamangalam village. P.W.2 is the brother of P.W.1 and they were sons of the deceased Ranga Naicker. They are all residing with family members. The appellants and the injured prosecution witnesses are the co-owners of Therkuthottam. They quarrelled for a long time in respect of a ridge adjacent to the lands.

(b) On the date of the occurrence, i.e., on 20.04.1997 at about 05.00 pm P.Ws.1 and 2, accompanied by their father, the deceased and P.W.3, the second wife of the deceased, were coming along the way on the ridge. At that time accused 1 to 8 constituted themselves into an unlawful assembly and came there. Accused-2 was armed with aruval, accused 3, 4 and 5 with sticks and accused 7 and 8 with iron pipes. Accused-2, questioning the deceased and P.Ws.1 to 3 as to how they could walk on the ridge, commenced the attack with the aruval on the head, both the legs and right hand of the deceased. Accused-4 attacked with stick on the legs and hands of the deceased. Accused-1 attacked P.W.1 with stick. Accused 5 and 6 attacked P.W.2 with sticks. Accused 7 and 8 attacked P.W.3 with iron pipes. P.W.4 witnessed all the accused attacking P.Ws.1 to 3 and according to P.W.4, all the accused fled away from the place of occurrence.

(c) P.W.1 was immediately taken to the Government Hospital, Sathyamangalam. P.W.9, who was on duty, examined him at 06.10 pm and gave treatment. The accident register copy is Ex.P.6, wherein the doctor has noticed the following injuries:

1.An incised wound right parietal region of the scalp 6 cm x 1 cm x bone depth. Bleeding present.

2.A lacerated wound right iliac fossa 2 cm x 1 cm x ½ cm.

Intimation was given to the Sathyamangalam police station by P.W.9.

(d) P.W.13, the Sub Inspector of Police, who was on duty at that time, came to the Government Hospital, Sathyamangalam, took the statement of P.W.1, marked as Ex.P.1, on the strength of which, registered a case in crime No.256/1997 under Sections 147, 148, 324, 326 and 307 of the Indian Penal Code. The copy of the first information report, Ex.P.19 was despatched to the Court.

(e) At 08.15 pm the deceased Ranga Naicker, who suffered severe injuries, was brought to the Sathyamangalam Government hospital and he

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was examined by P.W.9, the Doctor, who noted the following injuries in Ex.P.7, and since his condition was serious, referred him to the Government Hospital, Coimbatore:

1.An incised wound above forehead 10 cm x 2 cm x bone deep.
2.A stab wound right 1/3 cm x 1 cm x 1 cm irregular. Bleeding present. Deformity right 1/3 leg fracture BB right leg.
3.A stab wound left leg 1/3 x 3 cm x 1-1/2 cm x bone deep. Bleeding present.
4.A stab wound left leg 1/3 x 1 cm x 1 cm x 1 cm.
5.A stab wound 1/3 right forearm 1 x ½ cm x ½ cm. Bleeding present. Fracture BB right forearm.
6.A contusion right hand dorsum 5 cm x 3 cm.
7.A contusion right arm 5 cm x 3 cm.
8.An abration left arm 4 cm x ½ cm.
9.A stab injury left arm horizontal 2 cm x ½ cm x1/2 cm.
10.A cut injury left index finger 4 cm x 1 cm x bone deep. Bleeding present.
11.A contusion left thigh 6 cm x 6 cm.

P.W.2 was examined by P.W.9 at 08.20 pm and P.W.3 underwent the medical examination at 08.40 pm. The accident registers narrating the injuries on P.Ws.2 and 3 are marked as Exs.P.8 and P.9. The injuries found on P.W.2 as noticed in Ex.P.8 are :

1.Abrasion left maxilla 3 cm x 3 cm red in colour, bleeding.
2.A contusion left scapular region 4 cm x 4 cm.
3.A contusion left thigh 6 cm x 6 cm.

The injuries found on P.W.3 as noticed in Ex.P.9 are as follows :

1.Contusion left thigh 4 cm x 4 cm.
2.A contusion left arm 6 cm x 6 cm.
3.A contusion left infra scapula region 6 cm x 6 cm.
4.A contusion left thenar eminence 3 cm x 3 cm.

Ranga Naicker, who was taken to the Government Hospital, Coimbatore, was admitted as inpatient and was given treatment there.

(f) P.W.14, the Inspector of Police, Sathyamangalam, who, on receipt of the copy of the first information report, proceeded to the scene of occurrence and in the presence of two witnesses prepared Ex.P.3 observation mahazar and Ex.P.20 sketch and through the photographer P.W.6, the place of occurrence was photographed. The photographs and negatives are marked as M.Os.18 and 19.The material objects, marked as M.Os.9 to 17 were recovered under Ex.P5 mahazar.

(g) At 08.00 am on the next day, Ranga Naicker, who was undergoing treatment at the Government Hospital, Coimbatore, died. Intimation was sent to Sathyamangalam police station and the crime was altered into one under Section 302 of the Indian Penal Code. The first information report in the altered crime Ex.P.21 was despatched to the Court. The Inspector of Police, P.W.14 proceeded to the Government Hospital, Coimbatore and conducted inquest on the dead body of the deceased in the presence of

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witnesses between 12.00 noon and 01.30 pm and prepared Ex.P.21 inquest report. Following the same, the body was sent to the Government Hospital for conducting postmortem, along with a requisition.

(h) On a requisition, P.W.10, the doctor attached to the Government Hospital, Coimbatore conducted autopsy on the body of Ranga Naicker and noticed the following injuries :

External :

1. Vertical sutured wound with dried blood seen in middle of the frontal area 7 x 1 cm bone deep. The lower anterior end is 10 cm above bridge of nose. The margins are regular and both ends pointed.

2. Vertical sutured lacerated injury 2 x 2 cm bone deep. The anterior end is 2 cm away from posterior end of injury NO.1. Margins are irregular.
3. Vertical sutured incised wound 1 x 0.5 cm x skin deep middle of lateral surface of left arm.
4. A punctured wound 0.5 x 0.5 cm skin deep middle of back of left forearm.
5. Cut injury 3 x 0.75 cm x bone deep on lateral border of left index finger.
6. Cut injury 2 x 1 cm x bone deep on palmar aspect of left middle finger.
7. Lacerated injury 3 x 1 cm x bone deep on lower third of front of left leg with fracture of underlying tibia and surrounding contusion.
8. Lacerated injury 1 x 1 cm x bone deep with deformity of right leg with haematoma in the soft tissues of right leg in lower third.
9. Whole of right arm appears swollen and discoloured. Dissection reveals haematoma in the subcutaneous and muscular planes of whole of right arm, forearm and hand with fracture of metacarpal bone of right index finger and fracture lower end of radium.
10. Diffuse contusion 11 cm x 11 cm on front and lateral surface of lower half of right thigh.
11. Multiple abrasions of varying size and shape seen on the back of right hand, back of right forearm, lateral aspect of right arm and shoulder sizes 0.5 cm to 2 cm length and 0.5 cm x 4 cm in breadth.
12. Upper left central and lateral incisor teeth are loosened and blood stained.

Internal :

Subpleural haemotama 23 x 10 cms with clots weighing 150 gms. on the right side with pleura found adherent to the right lung. Diffuse contusion 24 x 13 cm on the back of right side chest. Fracture 4th to 8th ribs posteriorly on the right side with surrounding intercostal haemotoma in the 3rd to 8th intercostal space posteriorly on the right side.

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The doctor issued Ex.P.11 postmortem certificate in which he opined that the deceased died on account of shock and haemorrhage due to multiple injuries. The clothes worn by the deceased, which stood marked as M.Os.20 to 22 were recovered under Ex.P.12 mahazar.

(i) During investigation, P.W.14, the Investigating Officer arrested all the accused on 23.04.1997 at the early hours. Accused-2 gave a confession statement. The admissible part of that statement is marked as Ex.P.23. Pursuant to that statement, the weapons used by all the accused, which stood marked as M.Os.1 to 7 and M.O.23 and 24 spade and urea bag were recovered under a cover of mahazar, Ex.P.24. All the material objects recovered from the place of occurrence, from the body of the deceased and from the place of the second accused were submitted to the Court along with a requisition to subject them for analysis. Accordingly, they were subjected to. The chemical analyst report and the serologist report, Exs.P.15 and P.17 were received and placed before the Court. On completion of the investigation, the final report was filed by the Investigating Officer before the concerned Court. Then, the case was committed to the Court of Session. The above charges were framed against the accused, the appellants herein.

4. In order to substantiate the charges levelled against the appellants, 15 witnesses were marched by the prosecution, and the prosecution relied on 24 exhibits and 24 material objects. On completion of the evidence on the side of the prosecution, all the accused were questioned under Section 313 of the Code of Criminal Procedure as to the incriminating circumstances found in the evidence of the prosecution witnesses, and they flatly denied the same as false. No defence witness was examined nor any document was marked on its side. The trial Court, after hearing both sides and after thorough scrutiny of the materials, found all the accused guilty on different charges referred to above and awarded punishments as mentioned above, which are being subjected to challenge by these appellants.

5. Learned Senior Counsel for the appellants, at the time of advancing arguments, inter alia, would submit the following submissions:

All the witnesses marched by the prosecution, as direct witnesses, were all close relatives of the deceased and the lower Court has not looked into that point, but, has relied on their evidence. Apart from that, Ex.P.1 could not be the first information given to the police, since the evidence of P.W.2 would clearly indicate that the deceased Ranga Naicker himself had given a statement to the police and in the said statement he has also placed his thumb impression and under such circumstances, that should have been the first information, which has been suppressed and now what is before the Court as Ex.P.1 is not at all the first information and it must have been subsequently created to suit the prosecution case.

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6. Learned senior counsel would further add that P.W.1, according to the prosecution, went to the hospital first and was also examined by P.W.9 at 06.10 p.m. and the doctor gave information to the police at 07.00 pm. It is matter of shock and surprise to note that the Ranga Naicker, who was seriously injured, was not taken to the hospital immediately, but P.W.1 has gone to the hospital immediately and the deceased and the other injured witnesses, according to the prosecution, have also been taken to the hospital and examined only at 08.20 pm and 08.45 pm respectively and this is another circumstance which would cast a doubt on the prosecution case.

7. Added further, the learned senior counsel, that according to the evidence of P.W.2, P.W.1 went to the hospital immediately after the occurrence and P.W.9, who treated P.W.1, gave intimation to the police and the police came to the scene of occurrence and it was the police, who took the witnesses and the deceased to the hospital. Under such circumstances, added further the learned counsel, that there are two different versions given to the doctor by P.Ws.1 and 2 and the deceased Ranga Naicker, as to who gave the first information to the police.

8. The learned senior counsel further added that the lower Court has thoroughly misled itself as there in no evidence to show that there was an unlawful assembly or any rioting and under such circumstances, the finding of the lower Court regarding those offences suffers from illegality. The only evidence put forth by the prosecution through P.Ws.1 to 3, who according to the prosecution, are injured witnesses, is thoroughly discrepant and on that evidence, the lower Court should not have found the appellants guilty.

9. The learned senior counsel for the appellants would also submit that the first information reached the Court belatedly and when all these grounds are put together it can be well said that the prosecution has not proved the case beyond all reasonable doubts, which the lower Court should have taken into account and acquitted all the accused, but has not done so. Under such circumstances, all these accused are entitled for an acquittal in the hands of this Court.

10. This Court heard the learned counsel for the State on the above contentions.

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11. This Court paid its utmost attention to the submissions and made a thorough scrutiny on the entire materials available.

12. It is not in controversy that Ranga Naicker, and P.Ws.1 to 3 were injured on 20.04.1997 at 05.00 pm and were taken to Sathyamangalam Government Hospital for treatment; from there, the deceased was referred to the Government Hospital, Coimbatore, and was declared dead there at 08.00 am on the next day; a case was registered for the offences punishable under Sections 147, 148, 324, 326 and 307 of the Indian Penal

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Code and was later converted to one under Section 302 of the Indian Penal Code. Apart from that, inquest made by the Investigating Officer; the autopsy conducted by the postmortem doctor; the evidence of the doctor who certified the deceased as dead and the doctor who treated the injuries to the witnesses, will make it clear that Ranga Naicker died on account of homicidal violence, which fact was not disputed by the defence either before the lower Court or before this Court. Under such circumstances, it can be held that Ranga Naicker died on account of homicidal violence.

13. The case of the prosecution, as could be seen from the evidence, is that on the date and time of occurrence, eight accused, armed with deadly weapons, came in an unlawful assembly and were not only involved in rioting, but were also attacking Ranga Naicker and P.Ws.1 to 3, who were later taken to the hospital.

14. In a case where the witnesses are close relatives, the Court has to necessarily put the test of careful scrutiny on their evidence. If in the opinion of the Court, after that test is applied, the evidence is found to be discrepant, the prosecution cannot be said to have proved its case.

15. In the instant case, according to the prosecution, the occurrence took place at 05.00 pm and Ranga Naicker was seriously injured, but he was not taken to the hospital immediately, but, was taken to the hospital only by 08.15 pm. It is curious to know that P.W.1, who was injured in the same occurrence, went to the hospital at 06.10 pm and the intervening circumstance, between the admission of P.W.1 at 06.10 pm and the medical treatment to Ranganaicken at 08.15 pm, was the information given to the police, P.W.13 by P.W.1. According to the evidence of P.W.13, he came to know about the occurrence, on the intimation sent by the doctor, and he went to the hospital and recorded the statement of P.W.1, based on which he registered a case. But, it is doubtful as to whether this first information could have been given, as alleged by P.W.13, in his evidence, for the simple reason that at the time of cross examination, P.W.2, has categorically admitted that he saw Ranga Naicker giving a statement to the police, when the police came to the scene of occurrence, and the same was recorded and therein the deceased has affixed his thumb impression. Under such circumstances, it is highly unbelievable whether the first information, which came into existence and what is before the Court, could have been the first information.

16. Apart from that, according to the evidence of P.W.1, he went to the hospital at 06.10 pm and treatment was given to him. It is also made clear from the evidence of P.W.9 and the accident register issued by him, but, according to the evidence of P.W.2, P.W.1 came from the hospital to the place of occurrence and police also came there. It is

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clear that P.W.1 was never treated as inpatient. If to be so, from the evidence of P.W.2, it would be quite clear that P.W.1, after going to the hospital, went to the place of occurrence and took P.W.2 and others to the hospital and under such circumstances, he could not have been the author of Ex.P.1, as put forth by the prosecution case.

17. Yet another circumstance, which would go against the prosecution case is that Ranga Naicker, who was admitted at 08.15 pm has made a statement to P.W.9, the doctor that 10 known persons attacked him, while P.W.1 would say that they were attacked by 20 known and unknown persons and the other injured witnesses have given statements to the doctor coming out with different versions as to how many persons participated in the crime, and thus, it would be doubtful whether such an occurrence would have taken place. Therefore, it would be unsafe to rely on the evidence of the prosecution witnesses to sustain the conviction.

18. The lower Court has relied on the evidence of P.Ws.1 to 3 to find that all the appellants formed themselves into an unlawful assembly and six persons armed with weapons involved in rioting and committed the murder of the deceased. A contention was put forth by the Counsel for the State that the weapons used by all the accused were recovered from the second accused at the time of arrest, pursuant to the confession statement recorded by P.W.14. But that would be a single piece of evidence and that alone cannot be looked into without any supporting evidence on the side of the prosecution.

19. In such circumstances, this Court is of the opinion that the prosecution has not proved its case beyond all reasonable doubt and on the evidence available, it would be unsafe to find the appellants guilty and the lower Court erroneously found them guilty which has got to be set right and that could be done only by upsetting the judgment of the lower Court and it is accordingly set aside.

20. In the result, the criminal appeal is allowed. All the appellants are acquitted of all the charges. The bail bonds executed by the appellants shall stand cancelled.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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Copies to

1.The II Additional Sessions Judge, Erode.
2.The II Additional Sessions Judge, Erode, through the Principal District Judge, Erode.
3.The Judicial Magistrate, Sathyamangalam.
4.The Judicial Magistrate, Sathyamangalam, through the Chief Judicial Magistrate, Erode.
5.The Chief Judicial MAgistrate, Erode
6.The Superintendent, Central Prison, Coimbatore.
7.The Public Prosecutor, High Court, Madras.
8.The Sub Inspector of Police, Sathyamangalam.
9.The District Collector, Erode.
10.The Director General of Police, Chennai.

+1cc to Mr.M.M.Sundresh Advocate Sr 26205

JRG (CO)
km/7.7.

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